

With regard to the §102(e) rejection, Applicant initially notes that MPEP §2131 specifies that a given claim is anticipated “only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference,” citing Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, MPEP §2131 indicates that the cited reference must show the “identical invention . . . in as complete detail as is contained in the . . . claim,” citing Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). For the reasons identified below, Applicant submits that the Examiner has failed to establish anticipation of at least independent claims 1, 8 and 15 by the van Nee reference.

Applicant notes that each of independent claims 1, 8 and 15 includes a limitation relating to separation of communications on an uplink of a wireless cellular communication system from communications on the downlink using orthogonal frequency division multiplexing (OFDM). Applicant submits that the van Nee reference relied on by the Examiner in rejecting independent claims 1, 8 and 15 fails to teach or suggest at least this aspect of the claimed invention.

The Examiner in formulating the §102(e) rejection argues that the claimed arrangement is shown by “the possibility of asymmetric data links” in the OFDM system of FIG. 5 in van Nee. Applicant respectfully disagrees. Even if one were to assume for purposes of argument that the characterization of van Nee proffered by the Examiner is correct, the mere presence of asymmetric data links is not anticipatory of the above-noted separation of communications on an uplink of a wireless cellular communication system from communications on the downlink using OFDM. Clearly it is possible to have asymmetric data links in an OFDM system without the claimed separation of uplink and downlink communications using OFDM.

In view of the foregoing, it is believed that claims 1, 8 and 15 are not anticipated by the van Nee reference.

Dependent claims 4 and 11 are believed allowable for at least the reasons identified above with regard to their respective independent claims.

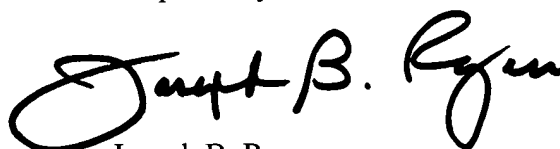
With regard to the §103(a) rejections, Applicant has submitted herewith a request for continued prosecution application (CPA). In view of this CPA, which is treated as an application filed subsequent to November 29, 1999, the present application thereby obtains the benefit of 35

U.S.C. §103(c). As a result, the van Nee reference, which issued after the effective filing date of the present application, is no longer available as prior art against the present application in a rejection under §103(a). More specifically, the subject matter of the van Nee reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person, namely assignee Lucent Technologies Inc. An assignment of the present application to Lucent Technologies Inc. was recorded in the U.S. Patent and Trademark Office on November 25, 1998 at Reel 9611, Frame 0502.

The §103(a) rejections based on van Nee should therefore be withdrawn, and each of dependent claims 2, 3, 6, 7, 9, 10, 13, 14, 16, 17, 20 and 21 should be indicated as containing allowable subject matter.

In view of the above, Applicant believes that claims 1-21 are in condition for allowance, and respectfully requests the withdrawal of the §102(e) and §103(a) rejections.

Respectfully submitted,

A handwritten signature in black ink, reading "Joseph B. Ryan". The signature is fluid and cursive, with the first name "Joseph" and last name "Ryan" clearly legible.

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